



Senate

General Assembly

File No. 68

February Session, 2008

Substitute Senate Bill No. 217

Senate, March 20, 2008

The Committee on Labor and Public Employees reported through SEN. PRAGUE of the 19th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT MANDATING EMPLOYERS PROVIDE PAID SICK LEAVE TO EMPLOYEES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2008*) As used in this section
2 and sections 2 to 5, inclusive, of this act:

3 (1) "Child" means a biological, adopted or foster child, stepchild or
4 legal ward of an employee;

5 (2) "Day or temporary worker" means an individual who performs
6 work for another on (A) a per diem basis, or (B) an occasional or
7 irregular basis for only the time required to complete such work,
8 whether such individual is paid by the person for whom such work is
9 performed or by an employment agency or temporary help service, as
10 defined in section 31-129 of the general statutes.

11 (3) "Employee" means any person engaged in service to an employer
12 in the business of the employer who is (A) paid on an hourly basis, or

13 (B) not exempt from the minimum wage and overtime compensation
14 requirements of the Fair Labor Standards Act of 1938 and the
15 regulations promulgated thereunder, as from time to time amended;

16 (4) "Employer" means any person, firm, business, educational
17 institution, nonprofit agency, corporation, limited liability company or
18 other entity that employs twenty-five or more persons;

19 (5) "Family violence" has the same meaning as provided in section
20 46b-38a of the general statutes;

21 (6) "Retaliatory personnel action" means any termination,
22 suspension, constructive discharge, demotion, unfavorable
23 reassignment, refusal to promote, disciplinary action or other adverse
24 employment action taken by an employer against an employee;

25 (7) "Sexual assault" means any act that constitutes a violation of
26 section 53a-70, 53a-70a, 53a-70b or 53a-72b of the general statutes or
27 section 53a-71 or 53a-73a of the 2008 supplement to the general
28 statutes; and

29 (8) "Stalking" means any act that constitutes a violation of section
30 53a-181c, 53a-181d or 53a-181e of the general statutes.

31 Sec. 2. (NEW) (*Effective October 1, 2008*) (a) Each employer shall
32 provide paid sick leave annually to each of such employer's employees
33 in the state. Such paid sick leave shall accrue (1) from the
34 commencement of an employee's employment, (2) at a rate of one hour
35 of paid sick leave for each forty hours worked by an employee, and (3)
36 in one-hour increments.

37 (b) An employee shall be entitled to the use of accrued paid sick
38 leave beginning on the ninetieth day after the employee's first day of
39 employment, unless the employer agrees to an earlier date. Each
40 employee shall be entitled to carry over up to fifty-two hours of
41 unused accrued paid sick leave from one year, whether calendar or
42 fiscal, to succeeding years. Each employee shall be entitled to use a
43 maximum of fifty-two hours of accrued paid sick leave per year.

44 (c) Any employer that offers employees paid leave, other than
45 vacation leave, that may be used for the same purpose and under the
46 same conditions as paid sick leave under this section and section 3 of
47 this act shall be deemed in compliance with this section.

48 (d) Nothing in this section shall be construed to prevent employers
49 from providing paid leave that is more generous than that required
50 under this section and section 3 of this act.

51 (e) Nothing under this section and section 3 of this act shall be
52 applicable to day or temporary workers.

53 Sec. 3. (NEW) (*Effective October 1, 2008*) (a) An employer shall permit
54 an employee to use paid sick leave:

55 (1) For (A) an employee's mental or physical illness, injury or health
56 condition, (B) the medical diagnosis, care or treatment of an
57 employee's mental or physical illness, injury or health condition, or (C)
58 preventive medical care for an employee; or

59 (2) For care of a child with a mental or physical illness, injury or
60 health condition that needs medical diagnosis, care, or treatment of
61 that illness or condition who needs preventative medical care; or

62 (3) Where an employee is a victim of family violence, sexual assault
63 or stalking (A) for medical care or psychological or other counseling
64 for physical or psychological injury or disability, (B) to obtain services
65 from a victim services organization, (C) to relocate due to such family
66 violence, sexual assault or stalking, or (D) to participate in any civil or
67 criminal proceedings related to or resulting from such family violence,
68 sexual assault or stalking.

69 (b) If an employee's need to use paid sick leave is foreseeable, an
70 employer may require advance notice, not to exceed seven days prior
71 to the date such leave is to begin, of the intention to use such leave. If
72 an employee's need for such leave is not foreseeable, an employer may
73 require an employee to give notice of such intention as soon as
74 practicable. For paid sick leave of three or more consecutive days, an

75 employer may require reasonable documentation that such leave is
76 being taken for the purpose permitted under subsection (a) of this
77 section. If such leave is permitted under subdivisions (1) and (2) of said
78 subsection, documentation signed by a health care provider who is
79 treating the employee or the employee's child indicating the need for
80 the number of days of such leave shall be considered reasonable
81 documentation. If such leave is permitted under subdivision (3) of said
82 subsection, a court record or documentation signed by an employee or
83 volunteer working for a victim services organization, an attorney, a
84 police officer or other counselor involved with the employee shall be
85 considered reasonable documentation.

86 Sec. 4. (NEW) (*Effective October 1, 2008*) (a) No employer shall take
87 retaliatory personnel action or discriminate against an employee
88 because the employee (1) requests or uses paid sick leave in
89 accordance with sections 2 and 3 of this act, or (2) files a compliant
90 with the Labor Commissioner alleging the employer's violation of
91 sections 2 to 5, inclusive, of this act.

92 (b) Any employer who is found by the Labor Commissioner, by a
93 preponderance of the evidence, to have violated the provisions of
94 sections 2 to 5, inclusive, of this act shall be liable to the Labor
95 Department for a civil penalty of six hundred dollars for each
96 violation. The Labor Commissioner may award the employee all
97 appropriate relief, including rehiring or reinstatement to the
98 employee's previous job, payment of back wages and reestablishment
99 of employee benefits to which the employee otherwise would have
100 been eligible if the employee had not been subject to such retaliatory
101 personnel action or discriminated against. Any party aggrieved by the
102 decision of the commissioner may appeal the decision to the Superior
103 Court in accordance with the provisions of chapter 54 of the general
104 statutes.

105 Sec. 5. (NEW) (*Effective October 1, 2008*) Each employer subject to the
106 provisions of section 2 of this act shall, at the time of hiring, provide
107 notice to each employee (1) of the employee's entitlement to sick leave,

108 the amount of sick leave provided and the terms under which sick
109 leave may be used, (2) that retaliation by the employer against the
110 employee for requesting or using sick leave is prohibited, and (3) that
111 the employee has a right to file a complaint with the Labor
112 Commissioner for any violation of sections 2 to 5, inclusive, of this act.
113 Employers may comply with the provisions of this section by
114 displaying a poster in a conspicuous place, accessible to employees, at
115 the employer's place of business that contains the information required
116 by this section in both English and Spanish. The Labor Commissioner
117 may adopt regulations, in accordance with chapter 54 of the general
118 statutes, to establish additional requirements concerning the means by
119 which employers shall provide such notice.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2008</i>	New section
Sec. 2	<i>October 1, 2008</i>	New section
Sec. 3	<i>October 1, 2008</i>	New section
Sec. 4	<i>October 1, 2008</i>	New section
Sec. 5	<i>October 1, 2008</i>	New section

LAB *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Labor Dept.	GF - Cost	129,500	129,500
Labor Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	33,000	76,000
Various State Agencies	Various - Cost	See Below	See Below

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 09 \$	FY 10 \$
Various Municipalities	STATE MANDATE - Cost	See Below	See Below

Explanation

The bill could result in a cost to the state. The bill requires employers with 25 or more employees to provide their employees with paid sick leave. Day and temporary workers are not covered under the bill. There are approximately 9,200 employers in both the public and private sectors and approximately 1.3 million employees in Connecticut.

Employees may file a complaint with the Department of Labor if their employer violates any of the provisions of Sections 2 to 5 of the bill. This is expected to increase the number of complaints regarding

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The first year fringe benefit costs for new positions do not include pension costs. The estimated first year fringe benefit rate as a percentage of payroll is 25.36%. The state's pension contribution is based upon the prior year's certification by the actuary for the State

wage and hour information and may require an additional wage investigator (annual salary of \$54,500 and full fringe benefits totaling \$32,000) in the Wage and Workplace Standards Division.

Currently, the department reviews approximately 100 cases annually for probable cause hearings regarding the Family Medical Leave Act, resulting in approximately 20 hearings per year. The number of probable cause hearings is expected to increase with the passage of the bill and may require an additional staff attorney (annual salary of \$75,000 and full fringe benefits totaling \$44,000).

The Labor Commissioner's decision to reward appropriate relief for a complaint may be appealed in Superior Court. Any administrative appeals under Section 4 of the bill could be accommodated by the Judicial Department and the Office of the Attorney General without requiring additional resources.

The bill could also result in a minimal revenue gain. Employers who violate Sections 2 to 6 of the bill will be liable to the Department of Labor for a civil penalty of \$600 for each violation.

It is not known how many state and municipal employees would be impacted by this bill; however, full-time and certain part-time employees (typically those working 20 or more hours per week) currently receive paid sick leave. The fiscal impact to the state and municipalities is the cost of the paid sick leave benefit. For example, if a part-time employee earning \$15 per hour accrues, and uses, 20 hours of paid sick leave in a year, the cost to the state or municipality for this one employee's benefit is \$300.²

The Out Years

The annualized ongoing fiscal impact identified above would

Employees Retirement System (SERS). The SERS fringe benefit rate is 33.27%, which when combined with the rate for non-pension fringe benefits totals 58.63%.

² \$15 hourly wage x 20 paid sick leave hours earned = \$300.

continue into the future subject to the rate of complaints and violations.

OLR Bill Analysis**sSB 217*****AN ACT MANDATING EMPLOYERS PROVIDE PAID SICK LEAVE TO EMPLOYEES.*****SUMMARY:**

This bill requires all employers with 25 or more employees to provide their employees with paid sick leave accruing at a rate of one hour for each 40 hours worked. Once employed for 90 days, employees are eligible to use the time and may use up to 52 hours of accrued sick leave a year. The leave can be used for an employee's or the employee's child's illness, treatment of an illness, diagnosis, and preventive medical care. It can also be used for reasons related to the employee being a victim of family violence, sexual assault, or stalking. Current law does not require employers to provide sick leave, whether paid or unpaid.

The bill does not cover day and temporary workers.

The bill bans employers from taking retaliatory or discriminatory action against an employee because the employee requests or uses paid sick leave as the bill provides.

The bill allows complaints to be filed with the labor commissioner. Employers who violate the bill are liable to the Labor Department for a civil penalty of \$600 for each violation. The commissioner may award appropriate relief, including rehiring or payment of back wages. Parties may appeal the commissioner's decision to Superior Court.

The bill requires employers to provide notice to covered employees of the bill's provisions and all rights due to the employees. The commissioner may develop related regulations requiring employers to

provide additional means of notifying employees.

EFFECTIVE DATE: October 1, 2008

PAID SICK LEAVE

This bill requires employers to provide their employees with paid sick leave accruing at a rate of one hour for every 40 hours worked. It defines “employer” as any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, or any other entity, including public sector employers, that employs 25 or more workers.

Once employed for 90 days, employees are entitled to use the time and can use up to 52 hours of accrued sick leave per year. Each employee is entitled to carry over up to 52 hours of accrued paid sick leave from one year, whether calendar or fiscal, to succeeding years.

Any employer that offers employees paid leave, other than vacation leave, that can be used for the same purposes and under the same conditions as sick leave under the bill is deemed to be compliant. It appears that in this case, the number of hours does not have to be the same as required by the bill.

The bill specifies that it does not prevent employers from providing a more generous paid leave policy than the bill requires.

COVERED EMPLOYEES (§ 1)

Under the bill, employee means anyone engaged in service to an employer in the employer’s business who is (1) paid at an hourly rate, or (2) subject to the minimum wage and overtime compensation requirements of the 1938 federal Fair Labor Standards Act, as amended. Generally, managers who have authority to hire and fire staff, and professional occupations (such as lawyers and physicians) are exempt from overtime requirements.

The bill specifically exempts day and temporary workers from its provisions. Such a worker is defined as one who performs work for

another on (1) a per diem basis or (2) an occasional or irregular basis for only the time required to complete the work, whether such individual is paid by the person for whom such work is performed or by an employment agency or temporary help service as defined in statute.

PERMITTED USES (§ 3(A))

Under the bill, an employer must permit an employee to use paid sick leave for the following reasons related to mental or physical illness:

1. an employee's or the employee's child's illness, injury, or health condition;
2. the medical diagnosis, care, or treatment of such a condition; or
3. preventive medical care for an employee or the employee's child.

"Child" is defined as a biological, adopted, or foster child, stepchild, or legal ward of the employee.

An employer must also allow an employee to use paid sick time when the employee is the victim of family violence, sexual assault, or stalking:

1. for medical care or psychological or other counseling for physical or psychological injury or disability;
2. to obtain services from a victim services organization;
3. to relocate; or
4. to participate in any related civil or criminal legal proceedings.

The bill uses the existing statutory definitions for "family violence," "sexual assault," and "stalking."

PERMITTED EMPLOYEE REQUIREMENTS (SEC. 3(B))

The bill permits employers to place certain requirements on employees seeking to use paid sick leave under various circumstances. If the need to use paid sick leave is foreseeable, an employer can require advance notice, not more than seven days before the date the leave is to begin, of the intention to take leave. If the leave is not foreseeable, an employer can require an employee to give notice as soon as feasible.

For leave of three or more consecutive days, an employer can require reasonable documentation that the leave is being taken for the purposes permitted by the bill. Table 1 shows how the bill defines reasonable documentation.

Table 1: Documentation Needed for Sick Leave

Type of leave	Documentation
Mental or physical illness, treatment of an illness or injury, mental or physical diagnosis, or preventive medical care for the employee or the employee's child	Documentation signed by the health care provider treating the employee or the employee's child and indicating the need for the number of days of such leave
Related to the employee being a victim of family violence, sexual assault, or stalking	A court record or documentation signed by an employee or volunteer working for a victim services organization, an attorney, police officer, or other counselor involved with the employee

RETALIATION PROHIBITED (§ 4(A))

The bill bans any employer from taking “retaliatory personnel action” or discriminating against an employee because the employee (1) requests or uses paid sick leave as provided in the bill or (2) files a complaint with the labor commissioner alleging an employer’s violation of the bill.

The bill defines retaliatory personnel action as a termination,

suspension, constructive discharge, demotion, unfavorable reassignment, refusal to promote, disciplinary action, or any other adverse employment action taken by an employer against an employee.

PENALTIES (§ 4(B))

Violators are liable to the Labor Department for a civil penalty of \$600 for each violation. The labor commissioner must find, by a preponderance of the evidence, that the employer violated its provisions. The commissioner also may award appropriate relief, including rehiring or reinstating the person, back wages, and reestablishing employee benefits for which the employee would have been eligible if not for the retaliatory action or discrimination.

Aggrieved parties may appeal the commissioner's decision to Superior Court.

EMPLOYEE NOTICE (§ 5)

Each employer subject to the bill must provide notice to each employee at the time of hiring that:

1. the employee is entitled to sick leave, the amount of sick leave provided, and the terms under which sick leave may be used;
2. retaliation by the employer against the employee for requesting or using sick leave is prohibited; and
3. the employee has a right to file a complaint with the labor commissioner for any violation of the bill.

An employer can comply with this requirement by displaying a poster in a conspicuous place, accessible to employees, at the employer's place of business that contains the required information in English and Spanish. The bill authorizes the commissioner to adopt regulations to establish additional notice requirements.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 6 Nay 2 (03/06/2008)